IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.5565/06
Vinod Kumar Goyal & Ors.
Vs.
Divisional Commissioner & Ors.

27.04.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Sudesh Bansal for petitioners.
Shri Dinesh Yadav for respondent no.2 & 3.

The respondent nos. 2 and 3 are represented by Shri Dinesh Yadav who has entered appearance as caveator. Respondent no.1 being the appellate forum is a proforma respondent. The respondent nos.4, 5 and 6 being the respondents in the appeal filed before the Divisional Commissioner, Jaipur, service on them is waived.

Heard learned counsel for the

parties.

Challenge has been made to the order dated 10.7.2006 passed by Divisional Commissioner, Jaipur in appeal filed by respondent nos. 2 and 3. According to the petitioners, they purchased plot nos.14, 65 and 66 respectively in the original scheme of Bal Vihar-A, at Sanganer, Jaipur from Shankar Bhawan Grih Nirman Sahakari Samiti Ltd., Jaipur (for short- `the Society') vide allotment letter dated 25.2.1995, possession of which were delivered to them. The respondent no.2 and 3 on the other hand claiming possession of the very same plot, filed an appeal before the Divisional Commissioner wherein they challenged the order dated 20.12.2004 passed by the

competent authority of JDA in exercise of his powers under section 90-B of the Land Revenue Act, 1956.

Learned counsel for the petitioners submits that the petitioners came to know on inspection of the records that the Society purchased the agricultural land of 10 bighas out of land of khasra no.454 to 457 situated at Village Mahal, Tehsil Sanganer, Distt. Jaipur from its khatedar Deen Dayal, Sita Ram Sons of Late Shri Gopal Sahai Tiwari and Smt. Mahtab Devi W/o Gopal Sahai thorough agreement to sale dated 15.7.1981 and 12.9.1984 on payment of full and final consideration vide agreement dated 6.3.92, therefore, JDA has rightly passed the order dated 20.12.2004 with regard to the resumption

of land and its conversion from agricultural to non agricultural uses. The society namely the respondent no.5 herein has been taken over by Administrator on 7.7.1995 as the same has become defunct and now therefore it may be possible that interest of the petitioners may not be properly taken care of by the Administrator. In the event of appeal by the respondent nos. 2 and 3 being allowed, interest of the petitioners would be gravely prejudiced.

On the other hand, Shri Dinesh Yadav, the learned counsel for the respondent nos. 2 and 3 argued that the competent authority while passing the impugned order did not provide opportunity of hearing to the respondent nos. 2 and 3 in as much as no agreement

to sale was executed by their predecessor in title, nor the land was ever sold out to the society. The competent authority without looking into all these aspects mechanically passed the order dated 20.12.2004. He argued that the learned Divisional Commissioner has rightly rejected the application of the petitioner for their impleadment as party to the appeal because they were not party before the competent authority.

Having heard the learned counsel for the parties, I find that the apprehension of the petitioners that the society having now been taken over by the Administrator, their interest may not duly taken care of by him and in the event of appeal being allowed, their interest would be severely affected is

not be completely unfounded. In the circumstances when the very title of the petitioners over the land in dispute which is subject matter of the appeal pending before the Divisional Commissioner, they are not only proper party but necessary party particularly when they themselves have come forward to apply to become party to the appeal. All that would happen on their impleadment would be that the Divisional Commissioner would have the advantage of hearing their version as well. This in my view would not in any way prejudice the contesting respondents. The reason given by the learned Divisional Commissioner that since the interest of the petitioners is represented by the society cannot be a sufficient ground for refusing to implead

them as respondent in appeal.

In view of the aforesaid discussion, the writ petition is allowed and the impugned order dated 10.7.2006 is set aside and the petitioners are ordered to be impleaded as party respondent to the pending appeal before the Divisional Commissioner.

(Mohammad Rafiq),J.

Rs/-